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Administrative Law

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SECOND SURVEY OF FLORIDA LAW

PART ONE PUBLIC LAW

ADMINISTRATIVE LAW

RICHARD HENRY LEE*

The purpose of this article is to survey the changes, both legislative and judicial, which have taken place in the field of Florida administrative law during the past two years.¹ Of necessity the range of administrative activity encompasses the whole area of legislative power and executive implementation; and the myriad substantive rules and regulations of the various administrative bodies cover a field as broad in scope as that of government itself. No attempt can be made here to deal with specific agencies or specific rules except insofar as they exemplify the more general considerations usually embraced under the heading Administrative Law.

STATUTORY DEVELOPMENTS

Administrative law for years has suffered from the belated and grudging recognition accorded it by bench and bar, and perhaps the neurotic inconsistencies it from time to time exhibits may best be understood in terms of a neglected childhood and an uninhibited adolescence. But the fact remains that today the administrative aspects of government have more immediate impact upon our people than does the traditional execu-

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1. Considered in this survey are cases reported in 66 So.2d through and including those in 81 So.2d together with legislation enacted during the 1955 session of the Florida Legislature.

tive, judicial and legislative triumvirate in and of itself. Government by administrative agency is no longer the lusty infant of the nineteen twenties, nor the precocious adolescent giant of the thirties. Rather, it is a veteran of the wars, a sober and useful partner of its elder brethren, and it is time a regular and well-defined place was made for it in the community of our legal institutions. The most important activity in this field by the 1955 Session of the Florida Legislature has been directed toward the creation of such a place.

Control of Administrative Agencies

The first step toward recognition of the maturity of Florida administrative law was the enactment of chapter 29777, Laws of Fla. 1955. This act provides for the filing of rules and regulations of administrative bodies with the Secretary of State, and for dissemination by him of this information to the interested public.

Hitherto, the only source of such information was the agency itself, and, although changes in rules might be published, unless the attorney dealing with the particular agency had had considerable experience, it was always possible that through no fault of his own he might act in ignorance, both to his own and his client's detriment. This act should go far to remove the aura of mystery which permeates the administrative area. It pins responsibility on the agency to act in the open, and the agency's failure to do so will result in no action at all. After January 1, 1956, no regulation or rule of any administrative body which affects the general public will be effective until 15 days after it has been filed with the Secretary of State. In an emergency a regulation may be made effective within a shorter period, but only upon affidavit setting forth the emergency, and then only as to persons having actual knowledge of the regulation.

This chapter also provides for registration with the Secretary of State of the name and address of every chairman and secretary of every state agency, and makes such registration conclusive upon the agency in any determination of the validity of service of process.

Chapter 29777 enacts in substance one of the principal sections of the Model State Administrative Procedure Act.² If it is properly administered it should represent a decided step forward in the development of state administrative law and may possibly foreshadow the adoption of other provisions of the Model Act.

Another legislative change, although affecting internal management only, which further raises the level of state agency responsibility is chapter

2. The Act was drafted by the National Conference of Commissioners on Uniform State Laws in 1946. For the full text of the act and an analysis and critique, see Schwartz, *The Model State Administrative Procedure Act*, 7 *RUTGERS L.REV.* 431 (1953).

29902, Laws of Fla. 1955. This act provides that all departments and branches of state government, except the legislature and the Legislative Reference Council and Bureau, shall comply with a uniform accounting system to be prescribed by the State Auditor.

Creation and Abolition of Administrative Agencies

The 1955 Legislature abolished the Florida State Advertising Commission and the Florida State Improvement Commission and transferred the functions of these two agencies to a new body, the Florida Development Commission.³

Chapter 29831,⁴ effective the same date, delegates new duties to the now defunct Improvement Commission, an error which probably invalidates this chapter relating to the financing of state office buildings.

Chapter 29833⁵ creates the Florida Avocado and Lime Commission, with broad powers for the regulation and taxation of these industries. The general purpose of the act is to increase consumption of these products through advertising, but incidental regulation is considerable and spelled out clearly in a well drafted piece of legislation. However, the provision for publication of rules and regulations⁶ seems unnecessary in view of the filing requirements of chapter 29777, *supra*.

By another act⁷ the State Board of Law Examiners is abolished, and the regulation of admissions to the Florida Bar is placed under the control of the Supreme Court. This action seems doubly appropriate in view of the legislative indiscretion considered and upheld in *Barr v. Watts*⁸ which is discussed in greater detail hereafter.

Changes in Scope and Powers of Administrative Agencies

Matters ranging from a reduction of the license fee for baby sitter agencies⁹ to a broad revision of Workmen's Compensation¹⁰ occupied much of the energies of the 1955 Legislature. Most of such matters are beyond the scope of this article and should be considered under their own distinct heads. Wide changes were wrought in the field of insurance law¹¹. The merit system previously in operation was considerably extended and a State Personnel Board was created.¹² The authority of the Railroad and Public Utilities Commission was extended to auto transportation brokers.¹³ Con-

3. Laws of Fla., c. 29788 (1955).

4. Laws of Fla., c. 29831 (1955).

5. Laws of Fla., c. 29833 (1955).

6. *Id.* § 17.

7. Laws of Fla., c. 29796 (1955).

8. 70 So.2d 347 (Fla. 1953).

9. Laws of Fla., c. 29943 (1955).

10. Laws of Fla., c. 29778 (1955).

11. 56 chapters of the 1955 session laws are concerned with insurance.

12. Laws of Fla., c. 29933 (1955).

13. Laws of Fla., c. 29787 (1955).

siderable change has been made in the Board of Dental Examiners.¹⁴ These and many other changes too numerous to mention are typical of the increasing tendency of legislatures everywhere to broaden and perfect the administrative machinery which more and more translates the results of legislative deliberation into effective action.

RECENT COURT DECISIONS

During the period under consideration the Florida Supreme Court reaffirmed many old principles and on several occasions acted to settle the law in doubtful situations. We shall consider here only those cases whose principles might be applicable to administrative law generally, leaving aside determinations peculiar to any one particular agency.

Legislative Standards and Administrative Discretion

The trend has been toward upholding broader delegations of discretionary power and a refusal to inquire into the basis for discretionary action. In a series of decisions affecting various agencies and diverse subject matter the Supreme Court has firmly reiterated its position that it will not disturb results of administrative discretion where the use of that discretion was not clearly in error.¹⁵ In other words, the court will not substitute its discretion for that of the agency.

However, where the agency has abused its discretion, or where the administrative action has been beyond the range of delegated power, the court has been quick to act. In *Lee v. Delmar*¹⁶ an attempt by the Real Estate Commission to refuse licenses to part-time real estate salesmen was held to exceed the authority granted by the Legislature. The Commission's action was based on the general rulemaking power delegated to it,¹⁷ but the Court pointed out that such power is limited to regulation in the public interest and cannot be construed as an unlimited grant. In declaring the Commission's resolution void, the Court implied that upon constitutional grounds such regulation might be beyond the scope of the legislature itself.

Similarly, in *Florida Tel. Corp. v. Carter*,¹⁸ an order of the Railroad and Public Utilities Commission denying a rate increase because of the inadequate service rendered by the petitioner was held an arbitrary act exceeding the statutory grant. The order was quashed and the Commission directed to grant the increase. Penalties for inadequate service must

14. Laws of Fla., c. 29882 (1955).

15. *Pirman v. Florida State Improvement Comm'n*, 78 So.2d 718 (Fla. 1955) (location of a bridge); *Hunter v. Solomon*, 75 So.2d 803 (Fla. 1954) (transfer and relocation of a liquor license); *State v. Florida State Improvement Comm'n*, 75 So.2d 1 (Fla. 1954) (location of a bridge); *Redwing Carriers, Inc. v. Carter*, 66 So.2d 217 (Fla. 1953) (certificate of public convenience and necessity).

16. 66 So.2d 252 (Fla. 1953).

17. FLA. STAT. § 475.05 (1951).

18. 70 So.2d 508 (Fla. 1954).

be considered in a separate proceeding. There is no statutory authority for rate regulation based upon quality of service performed.

Two more cases concerned with the granting of a certificate of public convenience and necessity by the same Commission also found that the Commission had acted beyond the power delegated to it by statute. *Redwing Carriers, Inc. v. Mack*,¹⁹ involved a consideration of FLA. STAT. § 323.04(3), which limits the grant of a new certificate to those cases in which "the existing certificate holders . . . fail to provide service which may reasonably be required." In this case the applicant was a new shipper desiring to carry liquefied petroleum gas, a product not previously shipped from the area in question. On certiorari the Court quashed the order granting the certificate and required that existing certificate holders be given an opportunity to provide the service. The action of the Commission was held to be in violation of the clear language of the statute. In *Tamiami Trail Tours v. Carter*,²⁰ the same question was presented. After some difficulty, the Court, upon rehearing, reaffirmed the *Redwing* decision.

Of perhaps greater importance was *Barr v. Watts*,²¹ which is possibly rendered moot in the particular field by transfer of control of the Bar from the Legislature to the Supreme Court. None the less it contains the seeds of future controversy in the area of administrative law generally. Here, the State Board of Law Examiners, confronted with special legislation designed to permit one favored individual to take the bar examination without meeting the qualifications of other applicants, believed such legislation unconstitutional, and withheld permission. In a mandamus proceeding the Supreme Court compelled the board to comply with the act and laid down the principle that an administrative agency may not determine constitutionality, a purely judicial function, but must put all qualms aside and blindly carry out its statutory mission. The court conceded that in certain cases, where the expenditure of state funds might be made under an unconstitutional statute, the agency might be justified in refusing to act; but in this case no such tender conscience was permitted.

In the view of the Court the act was constitutional, and the agency's suspicions were unfounded. It seems, however, that where a matter of such importance is involved, and where the act, even if constitutional, is such a perversion of the purposes for which the agency was created, the agency should be permitted to question the validity of the act and defer action until the court can settle the question. Justice Terrell's dissent seems far the sounder point of view. Perhaps, despite the sweeping language of the majority, this case can be construed as a simple determination of constitutionality and not as a requirement that administrators be unwilling accomplices to any and all legislative usurpation.

19. 73 So.2d 416 (Fla. 1954).

20. 80 So.2d 322 (Fla. 1955).

21. 70 So.2d 347 (Fla. 1953).

Other decisions sustained broad grants of power by the Legislature. In *Levine v. Hamilton*,²² involving the constitutionality of the extensive powers delegated to the Board of Pharmacy to fix the scope of the examination of applicants, it was held that despite the language of the statute,²³ it must be interpreted in the light of the purposes it was designed to achieve. A consideration of the statute as a whole indicated that the legislative intent was that the examination be confined to matters relating to pharmacy. Thus construed, the statute is constitutional. Any attempt by the Board to examine on unrelated matters would therefore be merely an effort to act beyond the range of delegated authority and void. Relying on the principle of construction that where a statute is susceptible of two interpretations the constitutional one shall prevail, the Court upheld the act and reduced the question from one of constitutionality to one of mere administrative discretion.

Perhaps the limit of discretion conferred by a statute²⁴ couched in modest language is to be found in *Fisher v. Schumacher*.²⁵ Words which merely seem to empower the State Board of Optometry to regulate misleading and untruthful advertising were used to sustain a code of ethics for optometrists which regulated such minute details as the size of window signs and the format of professional cards. The court sustained the regulation as being proper and necessary and within the discretion of the Board. Justice Drew dissented on the ground that no legislative standards were anywhere set up in the act, and that no authority for such regulation had been delegated. As in most such cases the decision depends upon a personal interpretation of the implied powers incidental to regulation generally. The majority in this case was extremely liberal.

Two interesting cases involving the propriety of discretionary action and also the question of estoppel against an administrative body are *Bregar v. Britton*,²⁶ and *Florida Livestock Board v. Gladden*.²⁷ The *Bregar* case was a suit in equity contesting the validity of a zoning regulation. The plaintiff obtained a zoning change permitting him to construct a drive-in movie, only to be informed, after he had expended some \$28,000 in reliance upon the board's action, that there had been a complaint and that there would be a re-hearing. At the re-hearing the board rescinded its previous resolution and re-established the original zoning requirement, preventing the plaintiff from making the use of the property which he desired. The Court held that the board's latest action was purely arbitrary; an abuse of discretion; and further, that in view of the board's knowledge of plaintiff's

22. 66 So.2d 266 (Fla. 1953).

23. FLA. STAT. § 465.02(1) (1951).

24. FLA. STAT. §§ 463.11, 463.14(1) (1953).

25. 72 So.2d 804 (Fla. 1954).

26. 75 So.2d 753 (Fla. 1954).

27. 76 So.2d 291 (Fla. 1954).

reliance and expenditure, the board was estopped to reconsider its prior action.

In the *Gladden* case²⁸ the Court was concerned with determining the effective date of a statute²⁹ barring compensation under certain circumstances to farmers whose animals were destroyed by the Board. The act provided that the effective date should be August 4; however, the Board by regulation delayed the effective date until August 15. Gladden, subsequent to August 4, engaged in activities which would have denied him compensation, but by August 15 he had mended his ways. The Board examined Gladden's livestock and found it necessary to destroy a large number of hogs. They then denied him compensation on the ground that he had violated the act. The Board contended that its regulation deferring the effective date of the act was invalid and a usurpation of the legislative function. The Court held, however, that the regulation was proper and necessary, and therefore valid, and further, that in any event, the Board, because of Gladden's reliance upon its regulation, was estopped to deny validity.

The implication from these cases is that in certain cases legislative standards may be broadened by estoppel, and discretion upheld even though beyond the reach of the legislative yardstick.

Several other decisions were handed down affecting the scope of administrative activity in the light of the empowering statute.³⁰ The constitutionality of Chapter 323 of the Florida Statutes, establishing control over motor carriers by the Railroad and Public Utilities Commission, was again upheld, this time in a case involving regulation of "trip lease" carriers.³¹ It was also held that no statutory authority was necessary to enjoin the operation of a nursery home whose operator has failed to obtain a license from the State Welfare Board.³² This would seem subject to injunction as a public nuisance regardless of statutory authority. In general, it may be said that despite the few restrictive cases discussed above, and excepting the dictum of *Barr v. Watts*, the attitude of the court has been a liberal one in defining the limits of administrative discretionary action.

Notice, Nature and Conduct of the Hearing

Lawyers as a class have long been suspicious of administrative hearings,³³ fearing, and with some justification, that expediency may triumph

28. *Ibid.*

29. FLA. STAT. §§ 585.48-585.59 (1953).

30. *Lambert v. State*, 77 So.2d 869 (Fla. 1955); *Ex rel. Kaplan v. Dee*, 77 So.2d 768 (Fla. 1955); *Weber v. Florida State Board of Optometry*, 73 So.2d 408 (Fla. 1954).

31. *Stewart v. Mack*, 66 So.2d 811 (Fla. 1953).

32. *State Dep't of Public Welfare v. Bland*, 66 So.2d 59 (Fla. 1953).

33. Elliott, *Trends in Administrative Law*, 17 NEV. STATE B.J. 1 (1952). Dean Elliott designates four stages in the history of the Bar's attitude toward administrative agencies; first, from 1900 to 1920, the "If you don't notice them, they'll go away"

over due process. Administrative procedure is concededly not that of the common law, but it must none-the-less be according to due process. The recent decisions of the Florida Supreme Court indicate a healthy awareness of the delicate line separating administrative necessity from abuse of constitutional safeguards, and have attempted to protect the latter without unduly burdening the administrative process.

Notice

In *State ex rel. Bergin v. Dunne*,³⁴ relator sought a writ of mandamus to compel the Board of Plumbing Examiners of Coral Gables to reinstate his master plumber's license which had been revoked by the Board without notice of hearing being given him. The Board replied, admitted that the license had been revoked without notice or hearing, but claimed that it had been obtained by fraud and that relator had never taken or passed the examination which was a condition precedent to the issuance of the license. Relator elected to stand on the pleadings and moved for the issuance of a peremptory writ. The majority of the Court held that relator's reliance on the pleadings constituted an admission that he had obtained his license by fraud and that "a writ of mandamus will not be allowed in a case of doubtful right; . . . it will not lie to compel the parties against whom it is directed to do a vain or useless thing."³⁵ The writ was denied. Roberts, C. J. dissented on the ground that any admission made by relator was for the purpose of the motion only, and, as in a demurrer, was an admission made solely to test the sufficiency of the opposing party's pleading. This case turns on the nature of the admission and is properly classified as setting forth a rule of procedural rather than substantive law, but it is submitted that despite the nature of the admission, the relator was entitled to a hearing. The ordinance under which the Board functioned³⁶ required a hearing, and the action of the Board appears arbitrary and not consonant with due process.

Conduct of the Hearing

In *Coleman v. Watts*,³⁷ a more satisfactory result was obtained. Petitioner, an applicant for admission as an attorney at law, was denied permission to take the bar examination by the State Board of Law Examiners as being morally unfit. He had appeared before the Board, submitted to an inquisition, and had repeatedly asked what charges had been made against him. No evidence of immoral activity was submitted to the Board in his presence, nor was he ever informed in what way he was deemed unfit.

stage; second, from 1920 to 1935, the "viewing with alarm" or "exorcism by anathema" period; then the period of proposed reform, 1935 to 1940; and the present stage which is described as the period of "reform from within" whose philosophy has been "If you can't lick 'em, join 'em."

34. 71 So.2d 746 (Fla. 1954).

35. *Id.* at 749.

36. City of Coral Gables, Ord. 669, § 12, (1950).

37. 81 So.2d 650 (Fla. 1955).

The conclusion of the Court was that the Board must have acted upon undisclosed information. The Court held this to be a denial of due process and that the applicant was entitled to know the charges against him, and that if such charges were not disclosed the Board was powerless to reject his application. "An administrative body, no matter how broad its discretion, must show, when its orders are properly challenged in the courts, that its conclusions are based upon record evidence and do not rest solely upon confidential information of which the applicant is not apprised, and as to which the administrative body gives such credence as to permit it to override a complete denial of derogatory implications by an applicant when he is questioned."³⁸

That the rule of the preceding case is limited to the agency's exercise of its judicial powers and does not apply when it is acting solely in an administrative capacity is indicated by *Seaboard A. L. Ry. v. Gay*,³⁹ wherein plaintiff's petition for certiorari was denied. This was a proceeding against the State Comptroller and the Railroad Assessment Board attacking the validity of tax assessments levied upon the plaintiff's property. The Board conducted a hearing to determine the amount of the assessment, and at the hearing the only evidence submitted was that of the plaintiff. Nonetheless, the Board at a later meeting valued plaintiff's property at a figure far in excess of plaintiff's valuation, and in fact adopted a valuation previously announced by the Comptroller and not sustained by any evidence. The Court in sustaining the action of the Board quoted with approval the language of the Circuit Judge: "The assessment of property by an administrative officer is the performance of an administrative duty, and contemplates that the officer bring to bear upon the problem an informed judgment of his own. It thus differs materially from a judicial proceeding in which a Court weighs the evidence before it and determines the facts based upon the weight of the evidence as distinguished from the exercise of the personal or individual judgment of the court."⁴⁰

Although more illustrative of the practice of particular agencies than indicative of administrative procedure generally, two cases were decided recently which are of some interest. In *White v. Lynn Foundry and Mach. Co.*,⁴¹ a workmen's compensation proceeding, the finding of the deputy commissioner that there had been no such wilfull violation of the speed laws as to preclude recovery by the claimant was reversed by the full commission which dismissed the claim. It was held that the full Commission had erred. "It is settled law that the Industrial Commission should not reverse the findings of fact made by a Deputy Commissioner unless it appears that those findings are clearly erroneous, and that they are not sup-

38. *Id.* at 652, 653.

39. 74 So.2d 569 (Fla. 1954).

40. 74 So.2d 569, 571, 572 (Fla. 1954).

41. 74 So.2d 538 (Fla. 1954).

ported by the evidence."⁴² In *Tamiami Trail Tours v. Carter*, discussed above under *Legislative Standards*, an incidental ground urged by the petitioners was that the Railroad Commission had overruled findings of fact made by the trial examiner which were adequately supported by evidence in the record. Although not relied upon in the final decision upon rehearing, the action of the commission on this point was upheld, and the court distinguished the different practice before the Industrial Commission by pointing out that there, the deputy commissioner, by statute, is made a trier of the facts, and the action of the full Commission is in the nature of review; whereas, before the Railroad Commission the trial examiner, if authorized at all, is merely an administrative aid to the Commission, and the initial determination is the action of the Commission itself.

Two other cases arising out of workmen's compensation proceedings are *Wheeler v. Hendry Corp.*⁴³ and *Roberts v. Wofford Beach Hotel*.⁴⁴ In the *Wheeler* case, certiorari was sought upon the ground that only two members of the commission sat on the appeal; whereas the statute provides "the full Commission shall consider the matter upon the record."⁴⁵ Motion to dismiss the petition was granted because no objection had been made at the time of hearing and the present objection was deemed too late. The Court expressly refused to determine whether action by but two members of the Commission was valid or invalid, but, in view of the decision such action is obviously not without jurisdiction. In the *Roberts* case, one ground of appeal was that the deputy commissioner excluded as hearsay a report by a nerve specialist of his examination of claimant. Such exclusion was held not to be error. Although as a general rule administrative tribunals are not bound by the common law rules of evidence, this case indicates that at least in Florida the hearsay rule is applicable in an administrative hearing.

Nature of the Hearing

In hearings incidental to the exercise of the licensing power an administrative agency exercises a function frequently termed "quasi judicial," and Florida has long recognized this activity as judicial in nature.⁴⁶ A recent decision of the Supreme Court reaffirms this position and further clarifies the nature of this function. *Robertson v. Industrial Ins. Co.*⁴⁷ was an action for libel and slander arising out of a hearing before the Insurance Commissioner held to determine the plaintiff's fitness to become an insurance agent. Defendants made certain derogatory statements at this hearing and prior thereto which might have been libelous unless they were privileged. It was held that the Commissioner's action in determining fitness of an

42. *Id.* at 541.

43. 70 So.2d 557 (Fla. 1954).

44. 67 So.2d 670 (Fla. 1953).

45. FLA. STAT. § 440.25(4) (1953).

46. *Ex rel. Williams v. Whitman*, 116 Fla. 196, 150 So. 136 (1933), 156 So.
705 (1934).

47. 75 So.2d 198 (Fla. 1954).

applicant was so much a judicial function that the same absolute privilege existed at the administrative hearing as exists in a regular judicial proceeding before a court.

Investigatory Powers

One of the principal differences between the duly constituted courts and administrative agencies is the latter's power to investigate incidental to the exercise of their other functions. That this power is broad and not subject to the inhibitions imposed on law enforcement agencies generally is exemplified in *In re Smith*⁴⁸ where investigators for the Hotel Commission used threatening language and forced their way, without a search warrant, into a private room in a hotel in search of evidence of gambling. The evidence obtained was admissible for the purpose of suspending the hotel license, and the action of the investigators was upheld as a valid exercise of the authority conferred by FLA. STAT. § 511.11 (1951), providing that the Hotel Commissioner will inspect "at least annually" every hotel and that he shall have access thereto "at any reasonable time." A strong dissent by Dayton, J. on the ground that this action was in fact an unreasonable search and seizure, and in violation of both state and federal constitutions, bears careful reading. It is to be hoped that the Commission's activity complained of here does not, by virtue of this decision, become the order of the day for administrative investigators generally.

Judicial Review

The varieties of judicial review of administrative action are considerable. The creating statute may establish an appeal procedure, or, in the absence of statute, review of administrative activity may be obtained by use of one of the common law writs, by resort to equity, or by defense of an action seeking to enforce the administrative order. Recent decisions of the Florida Supreme Court have not been precedent smashing, but rather have tended to clarify the details of procedure.

Administrative Prerequisites

The doctrine of exhaustion of administrative remedies was adhered to in two recent cases. In *Atlantic C. L. Ry. v. Carter*⁴⁹ the petitioner sought a writ of certiorari to review certain orders of the Railroad Commission which were not to go into effect until six months after the date the orders were entered. This action was brought before the effective date of the orders. Hearings had been held by the agency prior to the adoption of the orders, and no petition or motion was filed with the Commission for rehearing. The orders provided for exemptions in certain cases, within the discretion of the Commission. No application had been filed for exemption. The Court held that the orders complained of were not final orders and thus

48. 74 So.2d 353 (Fla. 1954).

49. 66 So.2d 480 (Fla. 1953).

were not subject to review by certiorari, and further that the petitioners had not exhausted the administrative remedies available to them.

In *Morrison v. Plotkin*⁵⁰ a pharmacist admitted to practice in New Jersey sought a decree construing FLA. STAT. § 465.071(1)(1953) which sets forth in rather broad terms the qualifications of applicants for examination. Plaintiff had not requested permission to take the examination given by the State Board of Pharmacy, nor had he applied for reciprocal registration on the basis of his New Jersey registration. It was held that no issue was presented. That as plaintiff had had no dealings with the Board he lacked the prerequisites to any legal action, that he had not exhausted his administrative remedies. The bill was dismissed.

Statutory Prerequisites

*Lipkin v. Roxy Cleaners*⁵¹ was a workmen's compensation proceeding. Notice of appeal filed with the commission in Tallahassee failed to fix a return day as required by statute.⁵² After time for appeal had passed, claimant attempted to amend the notice to comply with the statute. Claimant's appeal from an order of the board was dismissed by the circuit court for want of jurisdiction. The Supreme Court affirmed, pointing out that failure to meet the statutory requirement was fatal. Today this action would not be brought. The only method of review of orders of the Industrial Commission now is by certiorari.⁵³ However, this case is valid for our purposes in that it indicates that statutory requirements with regard to appeal are jurisdictional.

*Wilson v. McCoy Mfg. Co.*⁵⁴ is a particularly interesting case to anyone interested in the field of workmen's compensation as it elaborates upon the statutory procedure and, to a certain degree, supersedes it. This case considers the constitutionality of chapter 28241, Laws of Fla. 1953, which abolished the right of appeal in workmen's compensation cases and provided that such actions should be subject to review only by certiorari. The statute was held constitutional. However, the statute provided that the petition for certiorari must be filed within 30 days of the date of the mailing of the challenged order. This would have resulted in a different time limit for certiorari in these cases from that in all others, because Rule 28 of the Supreme Court provides that the petition is timely if filed within 60 days. To bring workmen's compensation cases into line with all other cases, the Court disregarded the 30 day provision of the statute and amplified Rule 28

50. 77 So.2d 254 (Fla. 1955).

51. 67 So.2d 660 (Fla. 1953).

52. FLA. STAT. § 440.27(4)(1951), incorrectly cited by the court as (1953).

53. Laws of Fla., c. 28241 (1953), amended FLA. STAT. § 440.27 (1951), by abolishing appeal and making certiorari the only method of review of the commission's orders.

54. 69 So.2d 659 (Fla. 1954); See also *American Airmotive Corp. v. Stutz*, 72 So.2d 665 (Fla. 1954).

to include specifically petitions for writs to the Industrial Commission.⁵⁵ Further, the Court in this case enlarged the scope of common law certiorari by extending to cases arising before the Industrial Commission the broader scope of review previously granted to matters involving the Railroad Commission.⁵⁶ In the *Wilson* case the Court said, "Parties aggrieved by orders of the Industrial Commission having been divested of any opportunity of review by appeal, the only course open to them is certiorari. The procedure by certiorari, that we are approving constitutes something less than appeal, something more than certiorari."⁵⁷

Venue

A series of cases reaffirmed the rule that where no emergency is present, and where no constitutional right of the plaintiff is challenged, and no attempt made to seize his property, proper venue for a suit against an administrative agency is in the county of the agency's residence.⁵⁸

Nature of Administrative Action Generally

What is the effect of an intervening change in the law between the time of administrative determination and the date of the eventual appeal? Several workmen's compensation cases recently decided have some bearing on this question. In *Glass v. Miller*,⁵⁹ where the change was the result of a judicial decision which was pending at the time the commission heard the matter, it was held that if the change occurs before the judgment is final, the cause will be remanded to the deputy commissioner with directions to reevaluate his decision in the light of the change.

In *Phillips v. West Palm Beach*⁶⁰ where, after the original determination by the commission, the statute was amended to broaden the scope of recovery in the event of permanent partial disability, and claimant's permanent partial disability did not occur until after the change, the Court none the less affirmed the commission's later award based upon the prior statute, holding that to apply the later statute would be to give it retroactive effect in violation of U.S. CONST. Art. 1, § 10. In *Plymouth Citrus Products Co-op v. Williamson*,⁶¹ the deputy commissioner, relying upon the then current decisions of the Supreme Court, denied recovery. After time to appeal had expired, a new decision of the Supreme Court was handed

55. FLA. SUP. CT. RULE 28 (e) and (c) (1949), superseded by FLA. SUP. CT. RULE 16 (1955) effective March 15, 1955; Laws of Fla., c. 29778 (1955) conforms the statute to the rule.

56. *Florida Motor Lines, Inc. v. Railroad Comm'rs*, 100 Fla. 538, 129 So. 876 (1930); See also *American Nat'l Bank v. Marks Lumber & Hdw. Co.*, 45 So.2d 336 (Fla. 1950).

57. *Supra* note 54 at 665.

58. *Larson v. Cooper*, 75 So.2d 757 (Fla. 1954); *Florida Real Estate Comm'n v. Bodner*, 75 So.2d 290 (Fla. 1954); *Dowdy v. Lawton*, 72 So.2d 50 (Fla. 1954); *McCarty v. Lichtenberg*, 67 So.2d 655 (Fla. 1953).

59. 65 So.2d 749 (Fla. 1953).

60. 70 So.2d 345 (Fla. 1953).

61. 71 So.2d 162 (Fla. 1954).

down which would have allowed claimant's recovery. Claimant thereupon brought a new action based upon the same facts, and the Commission allowed the claim. Upon application for certiorari by the employer the writ was granted. The Court held the original proceeding *res judicata*, and implied that although an intervening statute might permit a redetermination of the matter, an intervening decision could not.

In view of the Court's position in the *Phillips* case it seems doubtful whether any distinction could validly be made between a statute and a decision. In any event the holding of the *Plymouth* case that an administrative determination once final should be *res judicata* seems supported by common sense. Litigation must end sometime.

Where a statute provides that the administrative remedy is exclusive, even though the parties are engaged in illegal activity expressly prohibited by the statute, the sole remedy is the administrative one. In *Winn-Lovett Tampa, Inc. v. Murphree*,⁶² it was held that although a minor was injured while operating power driven equipment in violation of law, none the less he was an employee, and his only action was under the Workmen's Compensation Act. A writ of prohibition issued to the circuit court to prevent a suit at law against the employer.

In *State v. Murrell*,⁶³ a disbarment proceeding, the Court, in imposing suspension upon the offending attorney, conditioned the length of suspension upon the attorney's reimbursing the State Bar for expenses incurred in prosecuting the action. To a challenge to certain items of costs submitted by the Florida Bar the Court replied that this type of action was not an adversary proceeding and that the reimbursement due the Bar was not limited to legal costs. Despite the forum, this type of action is essentially administrative.

CONCLUSION

The recent legislation, upon which we have already touched, indicates the Legislature's awareness of the importance of Administrative Law in Florida. The approach has been conservative, as it should be, and it may be that the filing requirements of chapter 29777 alone will provide an adequate control. However, it will be profitable to study the experience of those states which have adopted, in toto, the Model Administrative Procedure Act. It is possible that further standardization of administrative procedure would be advisable, although the matter is at least debatable. However, excess of control may stifle flexibility, the administrator's finest contribution to modern government. The aim should be responsibility, not regimentation.

62. 73 So.2d 287 (Fla. 1954); See Note, 9 *MIAMI L.Q.* 111 (1954).

63. 74 So.2d 221 (Fla. 1954); 76 So.2d 290 (Fla. 1954).